D.B. CIVIL SPECIAL APPEAL(W)NO.308/2006

Prakash Chandra
Vs.
State of Rajasthan & Ors.

DATE OF ORDER :: 08-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri R.C. Joshi, for the appellant.

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The dispute relates to appointment on the post of teacher Gr.III.

Facts of the case briefly stated are that on 29.9.1984 the appellant was appointed on the post of teacher by the Panchayat Samiti, Dhodh(Sikar) on the basis of interview on purely temporary basis for a period of two months or till availability of the candidate recommended by the Panchayat Samiti and Zila Parishad Selection Commission whichever was earlier. Though, the appointment was terminable after two months, the appellant continued in employment. It is relevant to mention here that the posts of teachers were advertised in 1984. The appellant applied pursuant to the same but his candidature was rejected by the Rajasthan Panchayat Local Self Government Subordinate Services Commission on 17.6.1985 on the ground that he did not possess the

requisite qualification, namely B.S.T.C./B.Ed. The appellant did not challenge the action of the Commission.

The appellant, it may be mentioned here, claims to have undergone one year course or training in physical education from some Institute recognised by Directorate of Sports & Youth Services, Government of Maharashtra in 1980. Be that as it may, his services were terminated on 13.5.1987. He filed writ petition no.2890/1988 which was allowed on 7.8.1989. In the light of the said order of this Court, the appellant was re-appointed on temporary basis for six months or till availability of selected candidates whichever was earlier on 1.9.1989. Soon after, advertisement no.1/1990 was published inviting applications for appointment on the post. The appellant did not apply for the post. In stead, he filed the writ petition seeking direction to regularise him on the post of teacher Gr.III. The writ petition having been dismissed by the learned Single Judge, he has come to the Division Bench in this appeal.

It is not in dispute that for appointment on the post of teacher, the candidate must possess the requisite qualification of teacher's training i.e. B.S.T.C. or B.Ed., as the case may be. The case of the appellant is that qualification in physical education acquired by him may be treated as equivalent qualification and he should be appointed on regular

basis. Alternatively, his case is that if he did not possess the requisite qualification, the authority should have sent him for necessary training. We do not find any substance in either of the contentions.

Qualification in physical training is not recognised for appointment on the post of teacher. Certain orders passed by this Court were brought to our notice in some of which claim of the petitioners was allowed on the basis of qualification such as even Tailoring and Cutting. From the Government Order dated 30.10.1992 enclosed as annexure 9 to the writ petition it is clear that these qualifications are no longer recognised by the Government of Rajasthan. As a matter of fact, for appointment on the post of teacher, the qualifications laid down by the National Council for Teachers Education are relevant.

As regards the second contention, we are of the view that where the person holds a regular appointment but is subsequently found to be lacking in some respect, he may be sent for training but where the person does not possess the basic qualification since the very inception and is not appointed as per rules, the appointment being illegal ab initio, there is no question of sending him for training. The appointment of the appellant, it is clear, was made without following the laid down procedure. The appointment being not in accordance with

law, we do not think, the appellant can claim right that he should be sent for training.

In the above premises, we find no error in the order of the learned Single judge dismissing the writ petition.

The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen